

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

UNITED STATES STEEL CORP.,
CLEAVELAND-CLIFFS, INC.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Respondents.

Nos. 24-1946, 24-1951
(Consolidated)

**UNOPPOSED MOTION FOR A 14-DAY EXTENSION TO RESPOND TO
PETITIONER’S MOTION TO STAY THE CHALLENGED REGULATION**

Respondents, the United States Environmental Protection Agency, et al. (“EPA”), respectfully move for an extension of fourteen (14) days, until June 27, 2024, for EPA (and any other party entitled to file a response) to respond to the Motion to Stay submitted by Petitioner United States Steel Corporation (“U.S. Steel”) (Doc. 5400091). Movant U.S. Steel consents to this Motion. Requested Intervenor, Fond du Lac Band, et al. (“Environmental Petitioners”), also consents to this Motion. Non-moving Petitioner Cleveland-Cliffs, Inc., takes no position on this Motion.

In support of this Motion, EPA submits the following:

BACKGROUND

1. On May 3, 2024, U.S. Steel and Cleveland-Cliffs, Inc. (collectively “Industry Petitioners”) filed respective Petitions for Review in this Court of a final regulation promulgated by EPA titled “National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing,” 89 Fed. Reg. 16,408 (Mar. 6, 2024) (“2024 Taconite Rule”). Docs. 5390368, 5390720. On May 6, 2024, each Petitioner also filed essentially identical Petitions for Review of the 2024 Taconite Rule in the D.C. Circuit. Case Nos. 24-1109, 24-1110. Those cases were consolidated with a prior-filed case filed in the D.C. Circuit by Environmental Petitioners on May 3, 2024. Case No. 24-1107.

2. On May 17, 2024, EPA moved to dismiss this action because, under the judicial review provision of the Clean Air Act (“CAA”), 42 U.S.C. § 7607(b)(1), Petitioners’ challenges to the 2024 Taconite Rule may be heard *only* in the D.C. Circuit. Doc. 5395251 (“Motion to Dismiss”). In response EPA’s Motion, this Court suspended all prior-issued deadlines in this case. Doc. 5395501. EPA’s Motion to Dismiss is fully briefed and awaiting the Court’s decision.

3. Also on May 17, 2024, Industry Petitioners filed motions in the D.C. Circuit action seeking to transfer that action to this Court. EPA and Environmental

Petitioners have opposed those motions, which are also fully briefed and awaiting decision.

PETITIONER'S MOTION TO STAY

4. On June 3, 2024, U.S. Steel filed its Motion to Stay the 2024 Taconite Rule. On that same date, U.S. Steel filed a similar Motion to Stay the Taconite Rule in Case No. 24-1107 in the D.C. Circuit. Pursuant to Fed. R. App. P. 27, EPA's response to the Motions to Stay in both courts is due within ten days, by June 13, 2024.

5. U.S. Steel's Stay Motion raises technical issues regarding EPA's regulation of mercury, hydrogen chloride, and hydrogen fluoride, including according to U.S. Steel's Motion, how taconite ore processors control emissions of these pollutants, what technologies are available to control such emissions, EPA's review of data relating to the emission standards established by EPA, and other record-intensive technical issues raised by U.S. Steel.

6. There is an extensive administrative record supporting EPA's promulgation of the 2024 Taconite Rule that EPA is still gathering. EPA was originally not scheduled to file an index to the administrative record until June 17, 2024 (Doc. 2052847), four days after EPA's response to U.S. Steel's Motion to Stay is presently due. Pursuant to the Court's Order suspending all deadlines, there presently is no date on which EPA is to submit the index to the administrative

record. Given the technical aspects of U.S. Steel's claims, and the fact that EPA is still in the process of gathering the record that is directly relevant to the issues raised by U.S. Steel's Motion to Stay, the 10-day period normally allotted for filing of a response to a motion will not allow EPA time to adequately respond to U.S. Steel's allegations.

7. In addition to gathering and reviewing the extensive record supporting the 2024 Taconite Rule necessary to respond to the Motion to Stay, the process for filing EPA's response to U.S. Steel's Motion for a Stay requires not only drafting its responsive brief but also a multi-step review and approval process at both EPA and the Department of Justice, which adds to the time required for EPA to file its opposition to the Motion.

8. Granting EPA 14 additional days in which to respond to Petitioner's Motion will not unreasonably delay these proceedings or prejudice any party.

9. Accordingly, unless the Court stays all briefing on U.S. Steel's Motion to Stay pending resolution of EPA's Motion to Dismiss this action, EPA seeks a reasonable amount of additional time (14 days) to respond to U.S. Steel's Motion.

WHEREFORE, EPA respectfully requests that the Court grant EPA (and any other party entitled to file a response to the Motion for a Stay) an additional

fourteen days, until June 27, 2024, in which to file opposition(s) to U.S. Steel's Motion for a Stay.

Respectfully submitted,

OF COUNSEL:

TODD KIM
Assistant Attorney General

STACEY S. GARFINKLE
JEANHEE HONG
U.S. Environmental Protection Agency
Office of General Counsel
William Jefferson Clinton Building
1200 Pennsylvania Ave., NW
Mail Code 2344A
Washington, D.C. 20460

Perry M. Rosen
PERRY M. ROSEN
United States Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington D.C. 20044
perry.rosen@usdoj.gov
202-353-7792

DATE: June 5, 2024

Counsel for Respondents

CERTIFICATE OF COMPLIANCE UNDER FED. R. APP. P. 27

I hereby certify that this Motion complies with the type-volume limitation of Fed. R. App. P. 27 because this Motion contains 759 words, excluding the parts of the Motion that are exempt under applicable rules. This Motion complies with the typeface requirements of Fed. R. App. P. 27 and 32(a)(5) and the typeface style requirements of Fed. R. App. P. 32(a)(6), because the Motion was prepared in proportionally spaced typeface using Microsoft Word 14-point Times New Roman type.

So certified this 5th day of June, 2024 by

Perry M. Rosen

Perry M. Rosen

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of said filing to the attorneys of record for Petitioners and all other parties who have registered with the Court's CM/ECF system.

So certified this 5th day of June, 2024 by

Perry M. Rosen

Perry M. Rosen

Counsel for Respondents